

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

De'Marian A. Clemons,  
Plaintiff

V.

Brian Williams, et al.,  
Defendants

2:16-cv-00737-JAD-VCF

## **Order Dismissing and Closing Case**

On October 5, 2016, I denied Clemons's application to proceed *in forma pauperis* because Clemons has, on three or more prior occasions while incarcerated or detained in a facility, brought an action or appeal that was dismissed as frivolous, malicious, or for failure to state a claim.<sup>1</sup> I gave Clemons 30 days to pay the \$400 filing fee in full or face dismissal of this action. The deadline to pay the filing fee has expired, and Clemons has not paid the filing fee or requested an extension to do so.

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case.<sup>2</sup> A court may dismiss an action based on a party’s failure to prosecute an action, failure to obey a court order, or failure to comply with local rules.<sup>3</sup> In determining whether to dismiss an action on one of these

1 ECF No. 2.

<sup>2</sup> *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986).

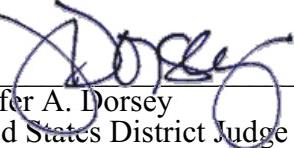
<sup>3</sup> See *Ghazali v. Moran*, 46 F.3d 52, 53–54 (9th Cir. 1995) (dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440–41 (9th Cir. 1988) (dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for lack of prosecution and failure to comply with local rules).

1 grounds, the court must consider: (1) the public's interest in expeditious resolution of litigation; (2)  
2 the court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy  
3 favoring disposition of cases on their merits; and (5) the availability of less drastic alternatives.<sup>4</sup>

4 The first two factors, the public's interest in expeditiously resolving this litigation and the  
5 court's interest in managing its docket, weigh in favor of dismissal. The third factor, risk of  
6 prejudice to defendants, also weighs in favor of dismissal because a presumption of injury arises  
7 from the occurrence of unreasonable delay in filing a pleading ordered by the court or prosecuting an  
8 action.<sup>5</sup> A court's warning to a party that its failure to obey the court's order will result in dismissal  
9 satisfies the fifth factor's "consideration of alternatives" requirement.<sup>6</sup> The fourth factor—the public  
10 policy favoring disposition of cases on their merits—is greatly outweighed by the factors favoring  
11 dismissal. Accordingly,

12 IT IS HEREBY ORDERED that **this case is DISMISSED without prejudice**. The Clerk of  
13 Court is instructed to CLOSE THIS CASE.

14 Dated this 16th day of November, 2016.

15   
16 Jennifer A. Dorsey  
United States District Judge

25 <sup>4</sup> *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423–24; *Malone*, 833 F.2d at 130; *Ferdik*,  
26 963 F.2d at 1260–61; *Ghazali*, 46 F.3d at 53.

27 <sup>5</sup> See *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976).

28 <sup>6</sup> *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132–33; *Henderson*, 779 F.2d at 1424.